

**PATENT APPLICATION**

I hereby certify that this paper is being deposited with the United States Postal Service on May 30, 2002, in an envelope as "Express Mail Post Office to Addressee" mailing Label No.EV017081255US addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

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*Annette M. Turk*  
Annette M. Turk, Legal Assistant

May 30, 2002  
(Date)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Brad Baker

Serial No. 09/607,313

Filed: June 28, 2000

For: PAINT SET CONFECTIONERY

Examiner: L. Tran

Group Art Unit: 1761

**DECLARATION OF DOUGLAS E. TAYLOR, SR.**

**RECEIVED**  
JUN 10 2002  
TC 1700

I, Douglas E. Taylor, Sr., do hereby declare and state as follows:

1. I am a consultant in the candy industry and I am President of DT & ASSOCIATES, LTD. I have been requested by counsel for Impact Confections, Inc. ("Impact") to evaluate whether in my opinion the product sold by Impact, called LOLLIPOP PAINT SHOP and generally known as "Paint Shop", has achieved commercial success in the candy industry.

2. My background in the candy industry is set forth in the attached resume. I have testified as an expert witness in food and confectionery lawsuits in the past. Within the last three years, I have served as an expert witness and have been deposed in two confectionery cases which reached a favorable conclusion for my client, the companies were medium to large in size.

3. I have also had direct experience in developing novelty candy products. I completely re-formulated and re-packaged the products of Lucas World of Santa Catarina, Mexico to appeal to the U.S. Hispanic market. The line was introduced to U.S. buyers at the national Candy Expo in June, 2000. Acceptance was very favorable. In September, 2000, I was successful in presenting the line and obtaining the first U.S. order from Walgreen's drug store chain. In January, 2002, Lucas was purchased by M&M Mars candy company. While the first full year of sales for the line of products that I developed for Lucas was very good, it was not as impressive as the first year of sales of the Impact "LolliPop Paint Shop" product.

4. Sales growth of LolliPop Paint Shop since 1999 has been remarkable. Sales increased by 152% in 2000 and 30% in 2001. This growth may be compared to total confectionery sales as reported by the National Confectioner's Association from 1999 to 2001 of approximately 12.5%.

5. Novelty candy has been driving the increase in confectionery sales for the last 4 to 5 years. Sales of traditional mainstream candy such as bars and hard candy has been relatively flat.

6. I have reviewed IRI data (Infoscan Reviews) regarding candy sales for the 52 week period ending August, 2001. During that period, LolliPop Paint Shop had sales of more than \$12 million. The product ranked 12<sup>th</sup> out of approximately 620 novelty/hard candy items included in the ranking. LolliPop Paint Shop outsells products with many years of distribution from leading U.S. confectionery manufacturers. For example, during this time period, LolliPop Paint Shop outsold Jolly Rancher candies from Hershey Foods, Skittles from M&M Mars, Necco Rolls from New England Confections, Sweet tarts from Nestle, and Pez from Pez Candy.

7. The success of a candy product is evidenced by the extent of distribution through various classes of trade. The success of LolliPop Paint Shop is therefore shown by the following list

of companies that sell the product:

- a. Convenience Stores - 7-Eleven and Circle K are the two largest C-Store chains in the U.S.
- b. Specialty Retailers - Bed, Bath, & Beyond and Hobby Lobby.
- c. Video Retailers - Blockbuster Video and Hollywood Video.
- d. Dollar Stores - Fred's Inc. and Family Dollar.
- e. Toy Retailers - Kay Bee Toys and Toys R Us.
- f. Warehouse Clubs - Costco, Sam's and Sam's International. These Clubs represent the three largest in volume and store count.
- g. Drug Store Chains - CVS Pharmacy, Eckerd Drugs, Rite Aid Corporation, and Walgreen's are the four largest Drug chains in this country.
- h. Grocery Chains - Kroger, Albertson's, Safeway, Winn Dixie, Publix, the top five grocery chains in the U.S.
- i. Entertainment - Six Flags.
- j. Mass Market Discount Retailers - K-Mart, Target, and Wal-Mart. These three discounters represent the largest dollar volume and store count in the U.S.

The above list in itself is extremely impressive considering that Impact sells Lollipop Paint Shop to over 2,700 U.S. accounts.

6. After analyzing the industry data, sales, and distribution figures supplied by Impact as shown above, I conclude that LolliPop Paint Shop is a huge commercial success because of phenomenal sales growth, excellent distribution, and a leader in the category as classified by IRI.

7. I further declare that all statements made herein of my own knowledge are true and

that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated this 30<sup>th</sup> day of May, 2002.

  
Douglas E. Taylor, Sr.

## ATTACHMENT TO DECLARATION

### REFERENCES

#### **DT & ASSOCIATES, LTD.**

DT & ASSOCIATES, LTD. was established in February 1997 by Douglas E. Taylor, Sr. He is a well-known, respected industry executive with 40 years experience in the packaged goods industry.

During his career, Taylor has been recognized for his extensive knowledge of and contributions to the industry with an induction into the Candy Hall of Fame and a designation as Dean of the Candy Industry.

Taylor also received the Pioneer Award from the National Food Brokers Association, now known as the ASMC, as well as the Publisher's Award, presented by *Professional Candy Buyer magazine*.

He was also past Chairman of the NCA Trade Relations Committee. Taylor is currently serving on the board of the National Confectionery Sales Association and is Trade Relations Editor of *Professional Candy Buyer magazine*.

#### **INDUSTRY AFFILIATIONS**

- American Wholesale Marketers Association
- National Association of Convenience Stores
- National Confectionery Sales Association

#### **CLIENT LIST**

- Bon Hon Buddies, Inc. (UK)
- Gilliam Candy Brands
- Baraboo Candy Co.
- Hyde + Hyde
- Ragold
- Sorbee International
- Mona Lisa Chocolates and Confection Co. LLC
- P&J Candy Co. (Canada)
- Lucas World (Mexico)
- Kuechle (Germany)
- Todd's Inc.

#### **PRIOR EXPERIENCE**

- Proctor & Gamble: Sales Management and Brand Development
- Major Food Broker: Vice-President Sales & Marketing
- Spangler Candy Co.: Senior Vice-President Sales & Marketing